

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

IN RE: CHARLOTTE BLACKWELL,	:	
AND D. MICHAEL FISHER,	:	
Petitioners	:	
	:	
	:	No. 01-4231
	:	
LISA MICHELLE LAMBERT,	:	
Respondent	:	
	:	
THE HONORABLE STEWART	:	
DALZELL,	:	
Nominal Respondent	:	

EMERGENCY MOTION FOR STAY

Petitioners, **CHARLOTTE BLACKWELL** and **D. MICHAEL FISHER**, by their attorneys hereby respectfully move the Court pursuant to F.R.A.P. 8, to stay all proceedings in *Lambert v. Blackwell, et al.*, No. 01-2511 (E.D. Pa.), pending disposition of the petition for writ of mandamus now before the Court. In connection with this motion, and in support of it, petitioners (hereinafter referred to as “the Commonwealth”) state as follows:

1. On November 28, 2001, the Commonwealth filed a petition for writ of mandamus in the Court seeking review of the denial of their motion for recusal in *Lambert v. Blackwell*, No. 01-2511 (E.D. Pa.), a *habeas corpus* action pursuant to 28 U.S.C. § 2254(d) by a prisoner serving a Pennsylvania sentence for first degree murder. The district court denied the Commonwealth’s motion for recusal in an order it issued on November 21, 2001,¹ in which it also indicated that it was adopting its findings from a prior, dismissed *habeas* action by the same petitioner and fixed certain deadlines

¹A copy of the order appears in the Addendum to the petition for writ of mandamus.

for the submissions by the parties.²

2. The Commonwealth's motion in the district court contended, as its petition in this Court contends, that recusal is warranted because reasonable persons might question the district court's impartiality.

3. On November 29, 2001, the Commonwealth filed both a motion seeking leave to supplement its petition to include very recently-received information about extrajudicial remarks made by the district judge relative to Lambert's earlier *habeas* litigation and a supplement to the petition setting forth that information.

4. On November 29, 2001, the Commonwealth also filed a motion in the district court to stay all proceedings in that court pending this Court's disposition of its petition for writ of mandamus.³

5. To date, the district court has taken no action on that motion and the deadline for responding to the same has passed.⁴

6. As the first of the deadlines for submissions established by the district court is now imminent, the Commonwealth asks this Court to issue a stay of all proceedings in the district court pending the Court's ruling on the petition for writ of mandamus.

²The district court, *inter alia*, directed that the parties inform it on or before December 20, 2001 as to whether they desired "to present additional testimony, and, if so, to describe how that testimony would address topics not previously canvassed in [Lambert's earlier *habeas*] proceedings." See Addendum to Mandamus Petition at p. 31 (pagination in original).

³A copy of that motion and the supporting memorandum filed with it are attached in the Addendum to this motion.

⁴Under Easter District Local Rule 7.1(c) a response was due 14 days after service. Since service was made by first class mail that period was extended by 3 days, *see* Fed.R.Civ.P. 6(e). Because that period ended on a Sunday, the deadline extended to December 17, 2001.

7. Issuance of a stay would serve the purposes of judicial economy and ensuring the integrity of the litigation.

8. Whether a stay should issue is a matter committed to the discretion of the Court. *See, e.g., Hilton v. Braunskill*, 481 U.S. 770, 775 (1987). In determining whether a stay is appropriate, the Court must consider what the Supreme Court has said are the “traditional factors regulating the issuance of a stay” under Fed.R.Civ.P. 62(c) (and also under F.R.A.P. 8(a)): (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of a stay will substantially injure the other parties interested in the proceedings; and (4) where the public interest lies. *Id.* at 776. As we show, *infra*, upon consideration of these factors, a stay should be granted in this case.

9. The Commonwealth’s petition for writ of mandamus, and the supplement thereto, demonstrate a strong likelihood of success on the merits of their application for extraordinary relief. As the discussion of the legal principles governing recusal in that document reflects, the abiding standard is not whether the judge to whom this case is assigned can be fair, but whether a reasonable person would have doubts about his impartiality. Respondents maintain that, given all that has transpired over the course of Lambert’s prior *habeas* action, the unusual procedural path of her presently-pending case in the district court, and the district court’s recently-discovered extrajudicial comments about her prior case while it was pending in the Supreme Court of the United States,⁵ reasonable persons would have doubts about the district court’s ability to be impartial. In its ruling on this issue, the district court, we submit, incorrectly focused on its

⁵A copy of the district court’s remarks were included in the supplement to the petition for writ of mandamus which was filed with the Court on November 29, 2001.

ability to be fair, not what reasonable persons would perceive. In not deciding the motion to recuse by that analysis, the district court's decision appears to run counter to the governing law and therefore, we submit, there is a strong likelihood of success.

10. If proceedings in the district court are permitted to continue, the Commonwealth will be irreparably harmed. It will be obliged to expend substantial time and public resources in connection with the submissions which are required by the district court's order of November 21, 2001. Should it ultimately be determined that another member of the district court will be assigned to this matter, there is a substantial likelihood that such expenditure of time and resources would be for naught. A new judge would likely have his or her own views about management of this litigation and the need, if any, for such submissions, would, by no means, be certain. The time and public resources which would needlessly be spent, in such a contingency, can never be recouped or recaptured. Because this case has already consumed vast amounts of the public's money, it is especially important to proceed on the side of caution.

11. Granting a stay does not work any appreciable harm to Lambert. Under the Federal Rules of Appellate Procedure, applications for writs of mandamus or prohibition are given precedence over ordinary civil cases. *See* F.R.A.P. 21(b)(5). Accordingly, any hiatus in the proceedings in this Court pending the Court's disposition of the Commonwealth's petition, can be expected to be of comparatively brief duration.

12. Finally, the public has a legitimate interest in guarding against the unnecessary expenditure of scarce judicial resources, both human and financial. As discussed, *supra*, in the absence of a stay of the district court's order, the possibility of needless expenditure of time and resources certainly presents itself. Denial of a stay will force the Commonwealth to undergo what ultimately may be a totally unnecessary and

costly exercise.

The public also has a legitimate and compelling interest in ensuring the integrity of the judicial process. Resolution of any questions about a judge's ability to preside over a matter is of fundamental importance and essential to ensuring that the process is not only sound, but that the public perceives it as sound. Public perception of justice would be greatly undermined if the district court were to proceed, grant relief (as the district court has clearly signaled it is inclined to do, *see* Memorandum of Nov. 21, 2001 at pp. 23-29), release the prisoner (as the district court did previously) and then be reversed by this court because the district court improperly denied recusal. The public interest thus weighs in favor of granting the stay.

WHEREFORE, the Court should stay all proceedings in the district court in No. 01-2511 (E.D.

Pa.) Pending disposition of the petition for writ of mandamus.

Respectfully submitted,

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DATE: December 18, 2001

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